



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1061]

RIN 1625-AA00

Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway; Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone in the West Duwamish Waterway in Seattle, Washington for scheduled drydock movements at Vigor Industrial. The safety zone is necessary to ensure the safety of the maritime public and workers involved in the drydock movements. The safety zone would prohibit any person or vessel from entering or remaining in the safety zone when a notice of enforcement is issued, unless authorized by the Captain of the Port or a Designated Representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2015-1061 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION

section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Christina Sullivan, Waterways Management Division, Sector Puget Sound, U.S. Coast Guard; telephone (206) 217-6051, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard periodically receives notification from Vigor Industrial regarding their scheduled drydock movements in the West Duwamish Waterway, and has established temporary safety zones to ensure the safety of the maritime public during Vigor Industrial's operations. The Coast Guard published a temporary safety zone; Vigor Industrial Ferry Construction, West Duwamish Waterway, Seattle, WA on September 9, 2014 (79 FR 53297).

Due to the dangers involved with a large, slow moving drydock that will be maneuvering close to the shore, the Coast Guard proposes the establishment of a short term safety zone that is activated on a notice of enforcement to ensure the safety of the workers involved as well as the maritime public during Vigor Industrial's operations.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231. Coast Guard Captains of the Port are granted authority to establish safety and security zones in 33 CFR 1.05-1(f) for safety and environmental purposes as described in 33 CFR part 165.

Vigor Industrial periodically conducts drydock movements in support of its vessel launching operations in the West Duwamish Waterway in Seattle, Washington. The Coast Guard proposes to establish a safety zone to ensure the safety of the workers involved as well as the maritime public during Vigor Industrial's operations, and would do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port (COTP) or a Designated Representative.

III. Discussion of Proposed Rule

The Coast Guard is establishing a safety zone encompassing all waters in a rectangle approximately 450-yards-by-500-yards at the mouth of the West Duwamish Waterway as it empties into Elliot Bay in Seattle, Washington. The safety zone is adjacent to the north- eastern tip of Harbor Island in Seattle, WA.

To request permission to enter the zone during the times set out by the notice of enforcement contact the Joint Harbor Operations Center at 206-217-6001 or the Vessel Traffic Service Puget Sound on VHF Channel 14. If permission for entry is granted vessels would be required proceed at a minimum speed for navigation.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone would impact a small designated area of the West Duwamish Waterway for less than 6 hours per occurrence. From 2005 through 2015, there were a total of 10 instances in which the Coast Guard issued a safety zone for the movement of the Vigor Dry Dock. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described

in E.O. 13132.

This proposed rule was determined to have potential tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would impact vessel traffic in the West Duwamish Waterway. The Coast Guard consulted with the Muckleshoot tribe on this notice of proposed rulemaking. In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will consult with the Muckleshoot tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a Federal trustee, will conduct consultation with the Muckleshoot tribe to ensure Vigor movements will avoid Treaty impacts.

If you believe this proposed rule has additional implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a safety zone to ensure the safety of the maritime public. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using

<http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1340 to read as follows:

§ 165.1340 Safety Zone; Vigor Industrial Drydock Movement, West Duwamish Waterway;

Seattle, WA.

(a) Location. The following area is a safety zone: All waters of the West Duwamish Waterway in Seattle, WA encompassed within the area created by connecting the following points: 47°35'04"N, 122°21'30"W thence westerly to 47°35'04"N, 122°21'50"W thence northerly to 47°35'19"N, 122°21'50"W thence easterly to 47°35'19"N, 122°21'30"W thence southerly to 47°35'04"N, 122°21'30"W.

(b) Regulations. (1) In accordance with the general regulations in subpart C of this part, when a notice of enforcement has been issued, no person may enter or remain in the safety zone created by this section unless authorized by the Captain of the Port or a Designated Representative. See subpart C of this part for additional safety zone information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the Joint Harbor Operation Center at 206-217-6001 or the Vessel Traffic Service Puget Sound on VHF channel 14.

(2) In order to reach an agreeable timeframe that avoids impacts to treaty fishing activities, the Coast Guard will consult with the Muckleshoot tribe and Vigor Industrial once it receives notification from Vigor Industrial concerning drydock movements that require the enforcement of the safety zone. If agreement is not reached, the Coast Guard, as a Federal trustee, will conduct consultation with the Muckleshoot tribe to ensure Vigor movements will avoid Treaty impacts.

(c) Enforcement periods. The safety zone described in paragraph (a) of this section will be enforced by the Captain of the Port only upon notice. Notice of enforcement by the Captain of the Port will be provided prior to execution of the drydock movement by all appropriate means, in accordance with 33 CFR 165.7(a). Such means will include issuance of a notice of

enforcement to be published in the **Federal Register**, Local Notice to Mariners, and Special Marine Information Broadcast.

Dated: November 8, 2016

M. W. Raymond,
Captain, U.S. Coast Guard,
Captain of the Port Puget Sound.

[FR Doc. 2016-27494 Filed: 11/15/2016 8:45 am; Publication Date: 11/16/2016]